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Consent Judgment

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA and)
THE DEPARTMENT OF NATURAL)
RESOURCES AND ENVIRONMENTAL)
CONTROL, an Agency of the State of)
Delaware,)

Plaintiffs,)

v.)

E.I. DU PONT DE NEMOURS & CO.,)

Defendant.)
_____)

Civil Action No. 11-1057-SLR

CONSENT DECREE

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Appendix A -- Map of Edge Moor Facility

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant E.I. Du Pont de Nemours & Co. ("DuPont" or "Defendant") violated Sections 301(a), 309(b) and (d), and 402(p) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311(a), 1319(b) and (d), and 1342(p), at an industrial facility that DuPont owns and operates in Wilmington, Delaware, known as the Edge Moor Plant.

Plaintiff the Department of Natural Resources and Environmental Control ("DNREC"), an agency of the State of Delaware (the "State") with delegated authority under the Act, is also a plaintiff in the complaint filed in this action concurrently with this Consent Decree and alleges violations of the Delaware Environmental Protection Act, codified in Chapter 60 of Title 7 of the Delaware Code ("Chapter 60"), and Delaware's Regulations Governing the Control of Water Pollution, 7 *Del. Admin. Code* § 7201 (the "Delaware Regulations"), at the Edge Moor Plant. The State is taking this enforcement action pursuant to 33 U.S.C. § 1370.

In the Complaint the United States alleges that at various times from 2005-2011, DuPont violated the Act by the unauthorized discharge of various pollutants from Edge Moor Plant outfalls in violation of National Pollutant Discharge Elimination System ("NPDES") Permit No. 0000051 issued by DNREC.

DNREC alleges in the Complaint that, based on the same unauthorized discharges of pollutants from the Edge Moor Plant from 2005-2011, DuPont violated 7 *Del. C.* §§ 6003 and § 3.01 of the Delaware Regulations.

DuPont does not admit any of the allegations set forth in the Complaint and denies liability to the United States and the State arising out of or relating to the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and DuPont conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over Defendant, this Decree, and any such action, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301(a), 309(b) and (d), and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1319(b) and (d), and 1342(p). Defendant also agrees

that the Complaint states claims upon which relief may be granted pursuant to 7 Del. C. §§ 6003(a), 6005 and the Delaware Regulations.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, DNREC, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Unless otherwise agreed to by the parties, no transfer of ownership or operation of the Edge Moor Plant, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve DuPont of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, DuPont shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the written agreement, to the United States and DNREC in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Edge Moor Plant without complying with this Paragraph constitutes a violation of this Decree.

5. DuPont shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. DuPont shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. In any action to enforce this Consent Decree, DuPont shall not raise as a

defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

6. It is the express purpose of the parties in entering into this Consent Decree to protect public health or welfare or the environment at the Edge Moor Plant and to resolve the claims of the United States and DNREC against DuPont, as provided in this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act, or in regulations promulgated pursuant to the Act, in Chapter 60, or in the Delaware Regulations shall have the meanings assigned to them therein, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the joint complaint filed by the United States and DNREC in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;
- c. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- d. "Defendant" or "DuPont" shall mean E.I. Du Pont de Nemours & Co.;

e. "DNREC" shall mean the Department of Natural Resources and Environmental Control, an agency of the State of Delaware, and any successor departments or agencies of the State of Delaware;

f. "End-of-Pipe Wastewater Treatment System" or the "Wastewater Treatment Plant" shall mean the area of the site beginning at A-3 and A-4 Tanks and ending at the 001 Outfall diffuser discharge. It includes the following equipment identified on the map attached to this Consent Decree as Appendix A:

- A-3 and A-4 Equalization Tanks, pumps and associated piping
- North & South Process Lift Stations
- Weir Box
- Caustic Head Tank
- #1 and #2 Neutralizers
- Polymer addition system
- Split Box
- Clarifiers (2)
- Sludge Underpumps (2)
- Sludge Tank, pumps and associated piping through to SCP-1 press feed valve
- #1 Filter Press
- Filtrate Tank, pumps and associated piping (as it applies to #1 Filter Press)
- Process sewer line linking Pond E to the Clarifiers
- E Pond (Polishing Pond)
- 001 Outfall diffuser, sump, pumps, associated piping and Analyzer House
- F Pond
- Diffuser Sump, monitoring station, & effluent diffuser
- Process Water Tank and System
- HCl Storage Tank and associated pumps and piping
- HCl Neutralizer and associated pumps and piping
- Lime System (lime pellet unloading, silos and screw feeders)
- Lime Slurry system (slakers, slurry storage, slurry pumps and piping to feed points)

g. "Edge Moor Plant" shall mean DuPont's industrial facility located at 104 Hay Road, in Wilmington, Delaware;

- h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. "Effective Date" shall have the definition provided in Section XV.
- j. "Environmental Compliance Assessment" shall mean the written report of the system engineering/performance evaluation to be performed generally in accordance with the DuPont Process Hazard Assessment methodologies outlined in DuPont Standard S25A, and in accordance with Section V of this Consent Decree for the Wastewater Collection System and the End-of-Pipe Wastewater Treatment System, often referred to as the "Wastewater Treatment Plant";
- k. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- l. "Parties" shall mean the United States, DNREC, and Defendant;
- m. "Permit" shall mean NPDES Permit No. DE0000051, which became effective for the Edge Moor Plant on September 29, 1989, as amended by any final and effective renewal permits that are not subject to appeal.
- n. "Section" shall mean a portion of this Decree identified by a roman numeral;
- o. "State" shall mean the State of Delaware;
- p. "United States" shall mean the United States of America, acting on behalf of EPA;

q. "Wastewater Collection System" or "Conveyances to Wastewater Treatment Plant" include those trenches, sumps, pipes, and pumps whose function is to collect process wastewater from various sources within the plant and convey it to the wastewater treatment plant. The subject conveyances are indicated on the site map drawing in Appendix A of this Consent Decree.

V. COMPLIANCE REQUIREMENTS

8. Environmental Compliance Assessment for the Edge Moor Plant Wastewater Treatment and Collection Systems

a. No later than three (3) months after the Effective Date of this Consent Decree, DuPont shall initiate an Environmental Compliance Assessment pertaining to the Wastewater Collection System and the End-of-Pipe Wastewater Treatment System at the Edge Moor Plant. The Environmental Compliance Assessment shall be performed by a team led by an engineer experienced in performing such assessments. The team shall exercise its independent judgment in making recommendations to Edge Moor Plant management to minimize the potential for unpermitted discharges from the Wastewater Collection System and the End-of-Pipe Wastewater Treatment System.

b. The Environmental Compliance Assessment required by Subparagraph a above shall review applicable equipment, instrumentation, loss of utilities (such as power, instrument air, water, or steam), human actions including inspection and maintenance cycles, and external factors (such as spills) to identify potential deviations from process design, maintenance, inspection, or operating practices that may lead to unauthorized discharges into the

Delaware River from the Wastewater Collection System or the End-of-Pipe Wastewater Treatment System as depicted on the map included in Appendix A. Specifically, the Environmental Compliance Assessment shall:

- (i) Assess the structural and mechanical integrity of each major component of the Wastewater Collection System and the End-of-Pipe Wastewater Treatment System;
- (ii) Assess the adequacy and effectiveness of the Wastewater Collection System and the End-of-Pipe Wastewater Treatment System (including associated electrical, instrumentation, control and alarm systems) to respond to reasonably anticipated variations in wastewater loadings from normal process operations and reasonably anticipated process upset conditions, including, but not limited to, the conditions that gave rise to the alleged unauthorized discharges listed in the Complaint, which occurred from 2005 to 2011;
- (iii) Determine appropriate procedures including, but not limited to, recommended maintenance and cleaning schedules for reducing build-up of solids in the process sewer line linking Pond E to the Clarifiers, and in the Effluent Diffuser, including the Diffuser Sump situated between Pond E and the Effluent Diffuser;
- (iv) Evaluate the appropriate dredging frequency for Pond E;

and

(v) Assess alternative methods of monitoring effluent discharged from the Effluent Diffuser, and determine the most effective methods.

c. No later than fifteen (15) months after the Effective Date of this Consent Decree, DuPont shall complete the written Environmental Compliance Assessment Report ("ECA Report") and submit it for review and approval to the United States and DNREC in accordance with Section XIV of this Consent Decree (Notices). After consulting with DNREC, EPA shall approve or disapprove the ECA Report. In addition to addressing the objectives set forth in Subparagraph b above, the ECA Report shall describe the scope of the engineering investigations comprising the Environmental Compliance Assessment and the investigative and testing methods used. The ECA Report shall present the results of the investigations and list the final recommendations and identified corrective actions, whether consisting of facility (hardware) improvements or replacements, changes in operating, maintenance, or cleaning practices, or other measures to minimize the potential for unpermitted discharges. DuPont shall also include in the ECA Report a schedule for implementation and completion of each corrective action.

d. Upon approval of the ECA Report by EPA, DuPont shall take all corrective actions required by the ECA Report in accordance with the schedules for completion contained in the ECA Report. If the ECA Report is disapproved in whole or in part then, subject to DuPont's right to dispute the disapproval under Section X of this Consent Decree (Dispute

Resolution), DuPont shall, within 90 days or such other time as the Parties agree to in writing, correct all deficiencies identified by EPA and DNREC and resubmit the ECA Report for approval, in accordance with Subparagraph c above.

VI. REPORTING REQUIREMENTS

9. DuPont shall submit the following reports:

a. Edge Moor Storm Water Plan Inspection Reports. After entry of this Consent Decree and until its termination pursuant to Section XVII, DuPont shall submit to EPA and DNREC copies of all Quarterly Routine Inspection Reports and Semiannual Comprehensive Inspection Reports produced in accordance with Sections 5.1 and 5.2 of the DuPont Edge Moor Storm Water Plan (dated February 28, 2010).

b. Annual Reports. Within 30 Days after the end of each calendar-year after entry of this Consent Decree, until termination of this Decree pursuant to Section XVIII, DuPont shall submit in writing to EPA and DNREC an annual report for the preceding calendar year. The report shall include:

- (i) the status of any corrective actions implemented pursuant to Section VI (Compliance Requirements);
- (ii) completion of milestones;
- (iii) problems encountered or anticipated, together with implemented or proposed solutions;
- (iv) a description of any unauthorized discharges and an explanation of the likely cause of the discharges and remedial steps

taken, or to be taken, to prevent or minimize such discharges or exceedences.

c. Reports of Permit Violations. As required under the Permit, if DuPont violates any requirement of the Permit, DuPont shall notify the United States and the State of such violation in accordance with NPDES Permit DE0000051 Part II (A) (2) (b) and Part II (A) (2) (c). Nothing in this Paragraph or the following Paragraph relieves DuPont of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

10. Whenever any violation of this Consent Decree or the Permit, or any other event affecting DuPont's performance under this Consent Decree, poses an immediate threat to the public health or welfare or the environment, DuPont shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after DuPont first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

11. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

12. The ECA Report submitted by DuPont under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

13. The reporting requirements of this Consent Decree do not relieve DuPont of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law. Nothing herein shall be construed as a waiver of any defenses DuPont may have in any future proceeding, all of which are specifically reserved.

VII. CIVIL PENALTY

14. Within 30 Days after the Effective Date of this Consent Decree, DuPont shall pay to the United States the sum of \$250,000.00 as a civil penalty.

15. DuPont shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to DuPont, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Delaware. At the time of payment, DuPont shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and DNREC v. E.I. Du Pont de Nemours & Co.*, and shall reference the civil action number and DOJ case number 90-5-2-1-09746, to the

United States in accordance with Section XIV of this Decree (Notices); by email to acctreceivable.CINWD@epa.gov; and by mail to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Office
PO Box 979007
St. Louis, MO 63197-9000

and

United States Environmental Protection Agency
Region III Docket Clerk (3RC00)
Office of Regional Counsel
1650 Arch Street
Philadelphia, Pa 19103-2029

16. Within 30 days after the Effective Date of this Consent Decree, DuPont shall pay a civil penalty of \$250,000.00 to DNREC. Payment shall be made by funds available same day by certified, corporate, or cashier's check payable to DNREC and delivered by overnight delivery to the attention of Deputy Attorney General Robert F. Phillips, Delaware Department of Justice, 102 W. Water Street, 3rd Floor, Dover, Delaware 19904.

17. DuPont shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or State or local income tax.

VIII. STIPULATED PENALTIES

18. DuPont shall be liable for stipulated penalties for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure) or as otherwise determined by the United States after consultation with the State. A violation includes

failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

19. Late Payment of Civil Penalty.

If DuPont fails to pay the civil penalty required to be paid under Section VII of this Decree (Civil Penalty) when due, DuPont shall pay a stipulated penalty of \$1,500 per Day for each Day that the payment is late.

20. Effluent Limits.

Stipulated penalties shall accrue per violation per Day for each violation of the effluent limits contained in the Permit:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th Day
\$2,500	15 th through 30 th Day
\$4,000	31 st Day and beyond

21. Environmental Compliance Assessment.

Stipulated penalties shall accrue for each violation of the obligation to submit the ECA Report or to implement a corrective action by a date specified in the ECA Report, as required by Section V of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th Day
\$2,500	31 st Day and beyond

22. Reporting and Records Retention Requirements.

Stipulated penalties shall accrue for each violation of the requirements of Paragraphs 4, 9, and 45 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th Day
\$2,500	31 st Day and beyond

23. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

24. Within 15 Business Days of a written demand by either Plaintiff, DuPont shall either pay stipulated penalties or invoke the Dispute Resolution provisions of Section X of this Consent Decree. DuPont shall pay 50 percent of the total stipulated penalty amount to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

25. The United States and DNREC may in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

26. Stipulated penalties shall continue to accrue as provided in Paragraph 23, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, after consultation with the State, that is not appealed to the Court, DuPont shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, DuPont shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c. below.

c. If any Party appeals the District Court's decision, DuPont shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

27. DuPont shall pay stipulated penalties owing to the United States and DNREC in the manner set forth and with the confirmation notices required by Paragraphs 15 and 16, respectively, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

28. If DuPont fails to pay stipulated penalties according to the terms of this Consent Decree, DuPont shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 and in 7 Del. C. § 6005, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for DuPont's failure to pay any stipulated penalties. DuPont

does not waive and specifically reserves all of its defenses to any such action by the United States or the State.

29. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for DuPont's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, DuPont shall receive full credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

30. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of DuPont, of any entity controlled by DuPont, or of DuPont's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite DuPont's best efforts to fulfill the obligation. The requirement that DuPont exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include DuPont's financial inability to perform any obligation under this Consent Decree.

31. If any event occurs or has occurred that may delay the completion of the ECA Report or performance of any measures required by the ECA Report as approved by EPA

and the State, whether or not caused by a force majeure event, DuPont shall provide notice orally or by electronic or facsimile transmission to Matthew Colip, EPA Region 3 (215-814-5439), and Glenn Davis, DNREC (302-739-9946), within five days of when DuPont first knew that the event will cause a delay. Within seven days thereafter, DuPont shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and DuPont's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. DuPont shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude DuPont from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. DuPont shall be deemed to know of any circumstance of which DuPont, any entity controlled by DuPont, or DuPont's contractors knew or should have known.

32. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation; provided, however, in appropriate

circumstances an extension of time for one Consent Decree obligation may necessitate an extension of time of other Consent Decree obligations. EPA will notify DuPont in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

33. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify DuPont in writing of its decision.

34. If DuPont elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, DuPont shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that DuPont complied with the requirements of Paragraphs 30 and 31, above. If DuPont carries this burden, the delay at issue shall be deemed not to be a violation by DuPont of the affected obligation of this Consent Decree identified to EPA, DNREC, and the Court.

X. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. DuPont's failure to seek resolution of a dispute under this Section shall preclude DuPont from raising any such issue as a defense to

an action by the United States or the State to enforce any obligation of DuPont arising under this Decree.

36. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when DuPont sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the Notice of Dispute is received by EPA or DNREC, whichever occurs later, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, shall be considered binding unless, within 10 Days after DuPont receives notice of the position of the United States, DuPont invokes formal dispute resolution procedures as set forth below.

37. Formal Dispute Resolution. DuPont shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting DuPont's position and any supporting documentation relied upon by DuPont.

38. The United States, after consultation with the State, shall serve a Statement of Position within 45 Days of receipt of DuPont's Statement of Position. The United States' and the State's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon

by the United States and the State. The United States' and the State's Statement of Position shall be binding on DuPont, unless DuPont files a motion for judicial review of the dispute in accordance with the following Paragraph.

39. DuPont may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Business Days of receipt of the United States' and the State's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of DuPont's and the United States' and the State's positions on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

40. The United States and the State shall respond to DuPont's motion within the time period allowed by the Local Rules of this Court. DuPont may file a reply memorandum, to the extent permitted by the Local Rules.

41. Standard of Review of Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 37 DuPont shall have the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record

and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and DuPont reserves the right to oppose this position.

42. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of DuPont under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 26. If DuPont does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties). If DuPont prevails on the disputed issue, no stipulated penalties shall be owed.

XI. INFORMATION COLLECTION AND RETENTION

43. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Edge Moor Plant, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by DuPont or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess DuPont's compliance with this Consent Decree.

44. Upon request, DuPont shall provide EPA and the State or their authorized representatives splits of any samples taken by DuPont. Upon request, EPA and the State shall provide DuPont splits of any samples taken by EPA or the State.

45. Until three years after the termination of this Consent Decree, DuPont shall make all reasonable efforts to retain, and shall instruct its contractors and agents to make all reasonable efforts to preserve, all non-identical copies of all final documents (including such documents in electronic form) in its or its contractors' or agents' possession that relate to DuPont's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, DuPont shall provide copies of any documents required to be maintained under this Paragraph, subject to DuPont's right to claim any such documents as privileged under the attorney-client privilege or any other privilege recognized by federal law. If DuPont asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the

privilege asserted by DuPont. However, no final documents or records created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

46. Reserved.

47. DuPont may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that DuPont seeks to protect as CBI, DuPont shall follow the procedures set forth in 40 C.F.R. Part 2.

48. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of DuPont to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

49. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action.

50. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 49; and DuPont does not waive and specifically reserves all defenses to any such claims. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in

Paragraph 49. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Edge Moor Plant, whether related to the violations addressed in this Consent Decree or otherwise. DuPont does not waive and specifically reserves all defenses to any such claims.

51. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Edge Moor Plant or DuPont's alleged violations, DuPont shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been resolved pursuant to Paragraph 49 of this Section.

52. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. DuPont is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; and DuPont's compliance with this Consent Decree shall be no defense to any action commenced by the United States or the State pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that DuPont's compliance with any aspect of

this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

53. This Consent Decree does not limit or affect the rights of DuPont or of the United States or the State against any third parties, not party to this Consent Decree.

54. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

55. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty.

XIV. NOTICES

56. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09746

To EPA:

Chief
NPDES Branch

Water Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Judith Hykel
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

To DNREC:

Glenn Davis
Delaware DNREC
Division of Water
Surface Water Discharges
Compliance & Enforcement
89 King's Highway
Dover, DE 19901

To the State:

Robert Phillips
Deputy Attorney General
Delaware Department of Justice
820 N. French St., 6th floor
Wilmington, DE 19801

To DuPont:

Stephen Rahaim
DuPont Legal - Corporate Counsel
1007 Market Street
Dupont Building -7099
Wilmington, DE 19898

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

58. Notices submitted pursuant to this Consent Decree shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

59. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

60. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

61. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

62. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 41, the Party seeking the modification bears the burden of

demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

63. This Consent Decree may be terminated when the United States, after consultation with the State, determines that DuPont has completed the requirements of Section V (Compliance Requirements) of this Decree; has thereafter maintained satisfactory compliance with all other requirements of this Consent Decree and DuPont's permit for a period of eighteen (18) months; and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree. The Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

XIX. PUBLIC PARTICIPATION

64. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. DuPont consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree unless the United States and/or the State has notified DuPont in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

65. Each undersigned representative of DuPont, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Secretary of DNREC certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. DuPont agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

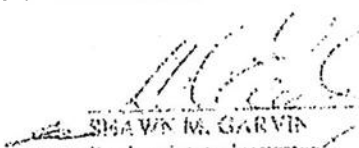
XXI. INTEGRATION

67. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

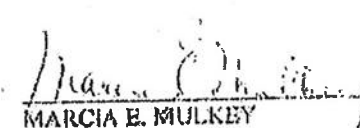
XXII. FINAL JUDGMENT

68. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and

FOR THE UNITED STATES OF AMERICA:


STEVEN M. GARVIN

Regional Administrator
U.S. Environmental Protection Agency
Region III


MARCIA E. MULKEY

Regional Counsel
U.S. Environmental Protection Agency
Region III


JOSEPH R. HYKIER

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III

FOR THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL, an agency of the State of Delaware:



COLLIN P. O'MARA

Secretary

Department of Natural Resources and Environmental
Control



ROBERT F. PHILLIPS

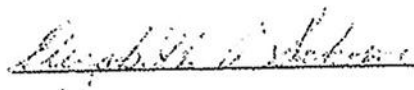
Deputy Attorney General

Delaware Department of Justice

820 N. French St., 6th floor

Wilmington, DE 19801

FOR E.I. DUPONT DE NEMOURS AND COMPANY

A handwritten signature in dark ink, appearing to read "Elizabeth A. Schowe", is written over a horizontal line.

Elizabeth A. Schowe
Plant Manager
DuPont Titanium Technologies
DuPont Edge Moor
104 Hay Road
Edge Moor, Delaware 19809